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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,334	01/31/2001	Arlene Balto	99999-0100US01	4268

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EXAMINER

COLLINS, TIMOTHY D

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 06/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	<i>JM</i>
	09/773,334	BALTO, ARLENE	
	Examiner Timothy D Collins	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,6,7,9-11 and 14-19 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
 5) Claim(s) ____ is/are allowed.
 6) Claim(s) 1-3,6,7,9-11 and 14-19 is/are rejected.
 7) Claim(s) ____ is/are objected to.
 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 11) The proposed drawing correction filed on ____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's arguments filed 3/18/03 have been fully considered but they are not persuasive.

a. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

b. In response to applicant's argument that there must be motivation to combine, the examiner maintains that the motivation to combine is stated in the below rejections, in the statements which state why these combinations would be made. It is also noted that the applicant seems to have seen these reasons and admits that these reasons are advantages.

c. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally

available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is found in knowledge generally available to one of ordinary skill in the art, which is that it is needed to make the cage portable and easy to move as well as to make the syringe stable so as to keep it from hurting the animal.

d. In response to applicant's argument that Chung is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Chung teaches of a syringe holder and dispensing fluids, and also the Gullino et al reference teaches of using a syringe for dispensing fluids. Therefore it is analogous and it is related. See number 38 for a needle in Gullino et al and also see number 31 for a syringe.

e. In response to applicant's argument that there is no syringe in Gullino et al. it is noted that the number 31 is a syringe and 38 is a needle. 31 is a syringe because it is called an "infusion pump" and it has a needle in it. Therefore since a syringe is a pump which injects fluid through a needle, the "infusion pump" of Gullino et al. is a syringe. It would appear that the previous 37 of the rejections below may have been a typo, and should be 31.

f. In response to the applicant's argument that the Chung reference is not used in the rejection of claims 7 and 9, it is noted that it is proper to reject claims in this manner. When a rejection is based on 3 references, and it is stated as obvious over those 3, it is still obvious over the other 2.

g. In response to the applicant's argument that the Thrun reference is concerned with daily living of an animal but the applicant's is concerned with living in the enclosure during therapy. The examiner maintains that this is an admission by the applicant that they are related and related art. The animal is living in both the devices and the amount of time spent in them is never claimed. Also both may be opened and closed and at some point in the animals time in the device, it will be confined, it appears that the applicant is arguing more specific than what is claimed.

i. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the animal is only in the container for a certain time) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

h. In response to the applicant's argument that the Chung reference does not disclose a syringe cradle, the examiner maintains that Chung in figure 1 at approximately number 23 and 26 discloses a syringe cradle.

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- i. In response to the applicant's argument that there is no reason to combine the cradle and couple it to anything. The examiner maintains that the motivation to do so is that it will hold the syringe steady and stable as taught in Chung, because Chung does not want the syringe to move, therefore it teaches of holding the syringe still while forcing fluid out, which is relevant to Gullino et al, which forces fluid out of the syringe of Gullino et al.
- j. For response to new added material in claim 7, see rejection below.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gullino et al. (US 3,897,751) (hereinafter referred to as 751) in view Chung (US 4,279,361).

Regarding claims 1 and 11, 751 discloses a housing 10 comprising a front panel 14, a rear panel 14, a bottom panel 14 and two side panels 14, and a fluid container support 34 coupled to the housing, and that the housing is used during therapeutic treatment (fig 1).

751 does not disclose a syringe cradle coupled to the housing or the fluid container; however, 751 does disclose medication disseminated to the animal via members 31, 40, 21, and 38.

Chung discloses a syringe cradle (see fig 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Chung to the invention of 751 in order to have the syringe means in a stable position in a stable condition and near the animal to be treated. It would further have been obvious to the ordinarily skilled artisan to attach the cradle to the housing or the fluid container, as the syringe disclosed by 751 is also in very close proximity to the cage and it would be intuitive to attach it to the cage or fluid container, and to allow for easier handling and transportation. While the examiner maintains the previous rejection, another reason this would be done is to make the device more portable and to keep the syringe from falling or moving around and pulling on the animal or out of the animal.

Claims 2, 3, 7-10, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over 751 in view of Chung, as applied to claim 1 above, and further in view of Thrun (US 6,349,675).

Regarding claims 2,7, and 14, 751 as modified by Chung discloses the top panel 16.

751 does not disclose a first and second top panel hingedly attached and coupled to the housing.

Thrun discloses a first and second top panel hingedly attached to the housing ((fig 5), and that the panels are selectively positionable to cover at least a portion of the opening, as they can be opened independently of one another (col 6, lines 26-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Thrun to the invention of 751 as modified by Chung, as the purpose of the doors disclosed by Thrun is to allow access to the interior of the enclosure.

751 as modified by Chung discloses a top panel (16 of 751).

751 does not disclose a first and second top panel hingedly attached and coupled to the housing, or that the panels in a closed position cover less than one hundred percent of the top opening.

Thrun discloses a first and second top panel hingedly attached to the housing ((fig 5), and that the panels are selectively positionable to cover at least a portion of the opening, as they can be opened independently of one another (col 6, lines 26-30) Thrun also discloses that the panels cover less than one hundred percent of the top portion in the closed position (fig 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Thrun to the invention of 751 as modified by Chung in order allow access to the interior of the enclosure without allowing a wide area to possibly permit an animal to escape.

Regarding claim 3, 751 discloses a securing device 20, which can be defined as a clasp, as it is holding the unit in place by a gripping means.

Regarding claim 15, 751 as modified by Chung discloses a top panel (16 of 751).

751 does not disclose a first and second top panel hingedly attached and coupled to the housing, or that the panels in a closed position cover less than one hundred percent of the top opening.

Thrun discloses a first and second top panel hingedly attached to the housing ((fig 5), and that the panels are selectively positionable to cover at least a portion of the opening, as they can be opened independently of one another (col 6, lines 26-30) Thrun also discloses that the panels cover less than one hundred percent of the top portion in the closed position (fig 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Thrun to the invention of 751 as modified by Chung in order allow access to the interior of the enclosure without allowing a wide area to possibly permit an animal to escape.

Regarding claim 9, 751 discloses a fluid container support 34coupled to the housing 14.

Regarding claim 10, 751 discloses a syringe 37.

751 does not disclose a syringe cradle coupled to the housing or the fluid container.

Chung discloses a syringe cradle (see fig 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Chung to the invention of 751 in order to have the syringe means in a stable position in a stable condition near the animal to be treated. It would further have been obvious to attach the cradle to the housing or the

fluid container, as the syringe disclosed by 751 is also in very close proximity to the cage and it would be intuitive to attach it to the cage or fluid container.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over 751 in view of Chung as applied to claim1 above, and further in view of Peterson.

Regarding claim 6, 751 as modified discloses a window 14.

751 does not disclose a grate covering the window.

Peterson teaches a grate (col 2, line 55).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Peterson with the invention of 751 as modified in order to create a cage which would not restrict airflow to the animal.

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over 751 in view of Chung as applied to claim1 above, and further in view of Carlin (US D 297,471).

Regarding claims16 and 18, 751 as modified by Chung discloses a housing 10 with a syringe cradle attached (Chung 23).

751 as modified does not disclose a post.

Carlin discloses a post (fig 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Carlin to the invention of 751 as modified in order to provide a secure means of support for the syringe cradle which would also be out of reach of the animal being treated.

Regarding claims 17 and 19, 751 as modified by Chung discloses the fluid container support 34.

751 as modified does not disclose that the fluid container support is crook-shaped.

Carlin discloses that the support is crook-shaped (fig 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Carlin to the invention of 751 as modified in order to hold items in a secure and stable position. A crook shaped pole is well known to be used in therapeutic treatment settings such as this one.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy D Collins whose telephone number is 703-306-9160. The examiner can normally be reached on M-Th, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4180.

tdc
June 12, 2003

MICHAEL J. SAGOWE
SUPERVISOR, PATENT EXAMINERS